NO.

IN THE

SUPREME COURT OF THE UNITED STATES

HARRISON AIRE, INC.
Petitioner,

v.

AEROSTAR INTERNATIONAL, INC. and RAVEN INDUSTRIES, INC.
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Did the circuit court create a new barrier to victims of anticompetitive activity in an aftermarket, by requiring the victim to show "hard evidence dissociating the competitive situation in the aftermarket from activities occurring in the primary market," contrary to the express language of this Court in *Eastman Kodak Co. v. Image Technical Services, Inc.*?

2. Did the circuit court's refusal to allow Plaintiff favorable inferences on a summary judgment motion "introduce a special burden on plaintiffs facing summary judgment in antitrust cases," contrary to the express direction of this Court in *Eastman Kodak Co. v. Image Technical Services, Inc.*?

PARTIES TO THE PROCEEDING

Harrison Aire, Inc.:

Plaintiff in the District Court for the Eastern District of Pennsylvania;

Appellant in the United States Court of Appeals for the Fourth Circuit;

Petitioner before this Court.

Aerostar International, Inc.:

Defendant in the District Court for the Eastern District of Pennsylvania;

Appellee in the United States Court of Appeals for the Fourth Circuit;

Respondent before this Court.

Raven Industries, Inc.:

Defendant in the District Court for the Eastern District of Pennsylvania;

Appellee in the United States Court of Appeals for the Fourth Circuit;

Respondent before this Court.

CORPORATE DISCLOSURE STATEMENT

Harrison Aire, Inc. has no parent corporation, nor does any publicly held company own 10% or more of its stock.

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TABLE OF CITED AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

Petitioner Harrison Aire, Inc. respectfully petitions this Court for a writ of certiorari to review a judgment of the United States Court of Appeals for the Third Circuit, entered in this proceeding on September 16, 2005.

OPINIONS AND ORDERS BELOW

The September 16, 2005 opinion of the United States Court of Appeals for the Third Circuit is reported at 423 F.3d 374 and is reproduced in Appendix A, beginning at 1a. The April 30, 2004 opinion of the United States District Court for the Eastern District of Pennsylvania is reported at 316 F.Supp.2d 186 and is reproduced in Appendix B, beginning at 27a.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on September 16, 2005. By order of October 14, 2005 that court denied a timely filed motion for rehearing. Jurisdiction

exists under 28 USC §1254(1), pursuant to which cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

No constitutional provisions or statutes are directly involved in resolution of this matter.

STATEMENT OF THE CASE

Procedural History

This is an antitrust case brought by a hot air balloon owner (petitioner Harrison Aire) against companies which manufactured hot air balloons (respondents Raven and Aerostar). Harrison Aire asserted federal antitrust claims and state law claims for fraud and negligence. Because citizenship was diverse, both federal question and diversity jurisdiction existed.

The complaint was filed on March 12, 2002. Both sides conducted extensive discovery, after which defendants filed a motion for summary judgment under FRCP 56. By order of April 30, 2004 the district court granted partial summary judgment, and dismissed the antitrust counts of the complaint.[1] On June 9, 2004 the district court entered final judgment on all counts, pursuant to the parties' stipulation submitted in accordance with *Brzozowski v. Correctional Physician Services, Inc.*, 360 F.3d 173 (3d Cir. 2004) and *Keefe v. Prudential Prop. & Cas. Co.*, 203 F.3d 219 (3d Cir. 2000).

Plaintiff appealed the June 9 judgment to the Third Circuit Court of Appeals, which affirmed the district court's judgment.[2] A timely-filed petition for panel rehearing was denied by order of October 14, 2005. The instant petition for writ of certiorari has been filed within the time permitted by Supreme Court Rule 13.

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[1] *Harrison Aire, Inc. v. Aerostar International, Inc.*, 316 F.Supp.2d 186 (E.D. Pa. 2004).

[2] *Harrison Aire, Inc. v. Aerostar International, Inc.*, 423 F.3d 374 (3d Cir. 2005).

Facts

Plaintiff produced evidence of the following facts in its response to Defendants' motion for summary judgment:

Hot air balloon envelopes wear out at the top first.[3] Replacing the top portion of the envelope's fabric significantly extends the envelope's useful life, and is much cheaper than replacing the entire envelope. Consequently there is a market for replacement fabric.

The barrier to entry into the replacement fabric market is high. FAA approval of the fabric is required before the fabric can be sewn into an envelope. The balloon's manufacturer enjoys a natural monopoly in the market, because the FAA approves the manufacturer's fabric when the FAA approves the manufacturer's balloon design. However, third parties who wish to sell replacement fabric must obtain FAA approval - for each model of each manufacturer's balloon - before they can sell replacement fabric.[4]

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[3]The envelope is the part of the balloon that holds the hot air.

[4]The "PMAs" and "STCs" referred to in the lower court opinions are, essentially, the FAA's licenses to

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